

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2440

Entitled the “Prospective Payment System for Nursing Facilities”.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19 (legislative day, SEPTEMBER 12), 1994

Mr. PRYOR introduced the following bill; which was read twice and referred  
to the Committee on Finance

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## A BILL

Entitled the “Prospective Payment System for Nursing  
Facilities”.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 100. SHORT TITLE.**

4       This Act may be cited as the “Prospective Payment  
5       System for Nursing Facilities” and shall apply to the pay-  
6       ment for services of nursing facilities under federally fund-  
7       ed long-term care programs.

8       **SEC. 101. DEFINITIONS.**

9       (a) For purposes of this Act:

10               (1) “Acuity payment” refers to a fixed amount  
11       that will be added to the facility-specific prices for

1 certain resident classes designated by the Secretary  
2 as requiring heavy care.

3 (2) “Administrative Procedure Act” refers to  
4 section 551 et seq. of title 5, United States Code.

5 (3) “Aggregated resident invoice” refers to a  
6 compilation of the per resident invoices of a nursing  
7 facility which contain the number of resident days  
8 for each resident and the resident class of each resi-  
9 dent at the nursing facility during a particular  
10 month.

11 (4) “Allowable costs” refer to costs which  
12 HCFA has determined to be necessary for a nursing  
13 facility to incur according to the Provider Reim-  
14 bursement Manual (hereinafter “HCFA-Pub. 15”).

15 (5) “Base year” refers to the most recent cost  
16 reporting period (consisting of a period which is  
17 twelve (12) months in length, except for facilities  
18 with new owners, in which case the period is not less  
19 than four (4) months nor more than thirteen (13)  
20 months) for which cost data of nursing facilities is  
21 available to be used for the determination of a pro-  
22 spective rate.

23 (6) “Case mix weight” is the total case mix  
24 score of a facility calculated by multiplying the resi-  
25 dent days in each resident class by the relative

1 weight assigned to each resident class, and summing  
2 the resulting products across all resident classes.

3 (7) “Complex medical equipment” refers to  
4 items such as ventilators, intermittent positive pres-  
5 sure breathing (IPPB) machines, nebulizers, suction  
6 pumps, continuous positive airway pressure (CPAP)  
7 devices, and bead beds such as air fluidized beds.

8 (8) “Distinct part nursing facility” refers to an  
9 institution which has a distinct part that is certified  
10 under title XVIII of the Social Security Act and  
11 meets the requirements of section 201.1 of the  
12 Skilled Nursing Facility Manual published by HCFA  
13 (hereinafter “HCFA-Pub. 12”).

14 (9) “Efficiency incentive” refers to a payment  
15 made to a nursing facility in recognition of incurring  
16 costs below a prespecified level.

17 (10) “Fixed equipment” refers to equipment  
18 which meets the definition of building equipment in  
19 section 104.3 of HCFA-Pub. 15. Fixed equipment  
20 includes, but is not limited to, attachments to build-  
21 ings such as wiring, electrical fixtures, plumbing,  
22 elevators, heating systems, and air-conditioning sys-  
23 tems.

24 (11) “Geographic ceiling” refers to a limitation  
25 on payments in any given cost center for nursing fa-

1 cilities in one of no fewer than eight (8) geographic  
2 regions, further subdivided into rural and urban  
3 areas, as designated by the Secretary.

4 (12) “Heavy care” refers to an exceptionally  
5 high level of care which the Secretary has deter-  
6 mined is required for residents in certain resident  
7 classes.

8 (13) “HCFA” refers to the Health Care Fi-  
9 nancing Administration of the Department of Health  
10 and Human Services.

11 (14) “Index[ed] forward” refers to an adjust-  
12 ment made to a per diem rate to account for cost  
13 increases due to inflation or other factors during an  
14 intervening period following the base year and pro-  
15 jecting such cost increases for a future period in  
16 which the rate applies. Indexing forward under this  
17 Act shall be determined from the midpoint of the  
18 base year to the midpoint of the rate year.

19 (15) “Marshall-Swift segmented cost method”  
20 refers to an appraisal method published by the Mar-  
21 shall-Swift Valuation Service.

22 (16) “Minimum Data Set” (hereinafter  
23 “MDS”) refers to a resident assessment instrument,  
24 currently recognized by HCFA, in addition to any  
25 extensions to MDS, such as MDS+, as well as any

1 extensions to accommodate subacute care which con-  
2 tain an appropriate core of assessment items with  
3 definitions and coding categories needed to com-  
4 prehensively assess a nursing facility resident.

5 (17) “Major movable equipment” refers to  
6 equipment which meets the definition of major mov-  
7 able equipment in section 104.4 of HCFA-Pub. 15.  
8 Major movable equipment includes, but is not lim-  
9 ited to, accounting machines, beds, wheelchairs,  
10 desks, vehicles, and X-ray machines.

11 (18) “Nursing facility” refers to an institution  
12 which meets the requirements of “skilled nursing fa-  
13 cility” under section 1819(a) of title XVIII of the  
14 Social Security Act and a “nursing facility” under  
15 section 1919(a) of title XIX of the Social Security  
16 Act.

17 (19) “Per bed limit” refers to a per bed ceiling  
18 on the fair asset value of a nursing facility for one  
19 of the geographic regions designated by the Sec-  
20 retary.

21 (20) “Per diem rate” refers to a rate of pay-  
22 ment for the costs of covered services for a resident  
23 day.

24 (21) “Relative weight” is the index of the value  
25 of the resources required for a given resident class

1 relative to the value of resources of either a base  
2 resident class or the average of all the resident  
3 classes.

4 (22) “R. S. Means Index” refers to the index  
5 of the R. S. Means Company, Inc., specific to com-  
6 mercial/industrial institutionalized nursing facilities,  
7 which is based upon a survey of prices of common  
8 building materials and wage rates for nursing facil-  
9 ity construction.

10 (23) “Rebase” refers to the process of updating  
11 nursing facility cost data for a subsequent rate year  
12 using a more recent base year.

13 (24) “Rental rate” refers to a percentage that  
14 will be multiplied by the fair asset value of property  
15 to determine the total annual rental payment in lieu  
16 of property costs.

17 (25) “Resident classification system” refers to  
18 a system which categorizes residents into different  
19 resident classes according to similarity of their as-  
20 sessed condition and required services.

21 (26) “Resident day” refers to the period of  
22 services for one resident, regardless of payment  
23 source, for one continuous twenty-four hours of serv-  
24 ices. The day of admission of the resident con-  
25 stitutes a resident day but the day of discharge does

1 not constitute a resident day. Bed-hold days are not  
2 to be considered resident days, and bed-hold day rev-  
3 enues are not to be offset.

4 (27) “Resource Utilization Groups, Version III  
5 (hereinafter “RUG–III”)” refers to a category-based  
6 resident classification system used to classify nurs-  
7 ing facility residents into mutually exclusive RUG–  
8 III groups. Residents in each RUG–III group utilize  
9 similar quantities and patterns of resources.

10 (28) “Secretary” refers to the Secretary of the  
11 Department of Health and Human Services.

12 **SEC. 102. PAYMENT OBJECTIVES.**

13 (a) Payment rates under the Prospective Payment  
14 System for Nursing Facilities shall reflect the following  
15 objectives:

16 (1) To maintain an equitable and fair balance  
17 between cost containment and quality of care in  
18 nursing facilities.

19 (2) To encourage nursing facilities to admit  
20 residents without regard to their source of payment.

21 (3) To provide an incentive to nursing facilities  
22 to admit and provide care to persons in need of com-  
23 paratively greater care.

24 (4) To maintain administrative simplicity, for  
25 both nursing facilities and the Secretary.

1           (5) To encourage investment in buildings and  
2       improvements to nursing facilities (capital forma-  
3       tion) as necessary to maintain quality and access.

4   **SEC. 103. POWERS AND DUTIES OF THE SECRETARY.**

5       (a) The Secretary shall establish by regulation, in ac-  
6       cordance with the Administrative Procedure Act, all rules  
7       and regulations necessary for the implementation of this  
8       Act. The rates determined under this Act shall reflect the  
9       objectives in section 102 of this Act.

10      (b) The Secretary may require that each nursing fa-  
11     cility file such data, statistics, schedules, or information  
12     as required to enable the Secretary to implement this Act.

13   **SEC 104. RELATIONSHIP TO TITLE XVIII OF THE SOCIAL**  
14                   **SECURITY ACT.**

15      (a) No provision in this Act shall replace, or other-  
16     wise affect, the skilled nursing facility benefit under title  
17     XVIII of the Social Security Act.

18      (b) The provisions of HCFA-Pub. 15 shall apply to  
19     the determination of allowable costs under this Act except  
20     to the extent that they conflict with any other provision  
21     in this Act.

22   **SEC. 105. ESTABLISHMENT OF RESIDENT CLASSIFICATION**  
23                   **SYSTEM.**

24      (a)(1) The Secretary shall establish a resident classi-  
25     fication system which shall group residents into classes ac-



1 cording to similarity of their assessed condition and re-  
2 quired services.

3 (2) The resident classification system shall be mod-  
4 eled after the RUG-III system and all updated versions  
5 of that system.

6 (3) The resident classification system shall be reflec-  
7 tive of the necessary professional and paraprofessional  
8 nursing staff time and costs required to address the care  
9 needs of nursing facility residents.

10 (b)(1) The Secretary shall assign a relative weight for  
11 each resident class based on the relative value of the re-  
12 sources required for each resident class. The assignment  
13 of relative weights for resident classes shall be performed  
14 for each geographic region as determined in accordance  
15 with subsection (c) of this section.

16 (2) In assigning the relative weights of the resident  
17 classes in a geographic region, the Secretary shall utilize  
18 information derived from the most recent MDS's of all of  
19 the nursing facilities in a geographic region.

20 (3) The relative weights of the resident classes in  
21 each geographic region shall be recalibrated every three  
22 (3) years based on any changes in the cost or amount of  
23 resources required for the care of a resident in the resident  
24 class.

1 (c)(1) The Secretary shall designate no fewer than  
2 eight (8) geographic regions for the total United States.  
3 Within each geographic region, the Secretary shall take  
4 appropriate account of variations in cost between urban  
5 and rural areas.

6 (2) There shall be no peer grouping of nursing facili-  
7 ties (e.g., based on whether the nursing facilities are hos-  
8 pital-based or not) other than peer-grouping by geographic  
9 region.

10 **SEC. 106. COST CENTERS FOR NURSING FACILITY PAY-**  
11 **MENT.**

12 (a) Consistent with the objectives established in sec-  
13 tion 102 of this Act, the Secretary shall determine pay-  
14 ment rates for nursing facilities using the following cost/  
15 service groupings:

16 (1) NURSING SERVICE COSTS. The nursing serv-  
17 ice cost center shall include salaries and wages for  
18 the Director of Nursing, Quality Assurance Nurses,  
19 registered nurses, licensed practical nurses, nurse  
20 aides (including wages related to initial and on-going  
21 nurse aide training and other on-going or periodic  
22 training costs incurred by nursing personnel), con-  
23 tract nursing, fringe benefits and payroll taxes asso-  
24 ciated therewith, medical records, and nursing  
25 supplies.

1           (2) ADMINISTRATIVE AND GENERAL COSTS. The  
2       administrative and general cost center shall include  
3       all expenses (including salaries, benefits, and other  
4       costs) related to administration, plant operation,  
5       maintenance and repair, housekeeping, dietary (ex-  
6       cluding raw food), central services and supply (ex-  
7       cluding medical supplies), laundry, and social  
8       services.

9           (3) FEE-FOR-SERVICE ANCILLARY SERVICES.  
10      Ancillary services to be paid on a fee-for-service  
11      basis shall include physical therapy, occupational  
12      therapy, speech therapy, respiratory therapy,  
13      hyperalimentation, and complex medical equipment  
14      (CME). These fee-for-service ancillary service pay-  
15      ments under part A of title XVIII of the Social Se-  
16      curity Act shall not affect the reimbursement of an-  
17      cillary services under part B of title XVIII of the  
18      Social Security Act.

19          (4) SELECTED ANCILLARY SERVICES AND  
20      OTHER COSTS. The cost center for selected ancillary  
21      services and other costs shall include drugs, raw  
22      food, medical supplies, IV therapy, X-ray services,  
23      laboratory services, property tax, property insurance,  
24      minor equipment, and all other costs not included in  
25      the other four cost/service groupings.

1           (5) PROPERTY COSTS. The property cost center  
2       shall include depreciation on the building(s) and  
3       fixed equipment, major movable equipment, motor  
4       vehicle(s), land improvements, amortization of lease-  
5       hold improvements, lease acquisition costs, and cap-  
6       ital leases; interest on capital indebtedness; mort-  
7       gage interest; lease costs; and equipment rental  
8       expense.

9       (b) Nursing facilities shall be paid a prospective, fa-  
10      cility-specific, per diem rate based on the sum of the per  
11      diem rates established for the nursing service, administra-  
12      tive and general, and property cost centers as determined  
13      in accordance with sections 108, 109 and 112 of this Act.

14      (c) Nursing facilities shall be paid a facility-specific  
15      prospective rate for each unit of the fee-for-service ancil-  
16      lary services as determined in accordance with section 110  
17      of this Act.

18      (d) Nursing facilities shall be reimbursed for selected  
19      ancillary services and other costs on a retrospective basis  
20      in accordance with section 111 of this Act.

21      **SEC. 107. RESIDENT ASSESSMENT.**

22      (a) The nursing facility shall perform a resident as-  
23      sessment in accordance with section 1819(b)(3) of title  
24      XVIII of the Social Security Act within fourteen (14) days

1 of admission of the resident and at such other times as  
2 required by that section.

3 (b) The resident assessment shall be used to deter-  
4 mine the resident class of each resident in the nursing fa-  
5 cility for purposes of determining the per diem rate for  
6 the nursing service cost center in accordance with section  
7 108.

8 **SEC. 108. THE PER DIEM RATE FOR NURSING SERVICE**  
9 **COSTS.**

10 (a)(1) The nursing service cost center rate shall be  
11 calculated using a prospective, facility-specific per diem  
12 rate based on the nursing facility's case-mix weight and  
13 nursing service costs during the base year.

14 (2) The case-mix weight of a nursing facility shall  
15 be obtained by multiplying the number of resident days  
16 in each resident class at a nursing facility during the base  
17 year by the relative weight assigned to each resident class  
18 in the appropriate geographic region. Once this calculation  
19 is performed for each resident class in the nursing facility,  
20 the sum of these products shall constitute the case-mix  
21 weight for the nursing facility.

22 (3) A facility nursing unit value for the nursing facil-  
23 ity for the base year shall be obtained by dividing the nurs-  
24 ing service costs for the base year, which shall be indexed  
25 forward from the midpoint of the base period to the mid-

1 point of the rate period using the DRI McGraw-Hill  
2 HCFA Nursing Home Without Capital Market Basket, by  
3 the case-mix weight of the nursing facility for the base  
4 year.

5 (4) A facility-specific nursing services price for each  
6 resident class shall be obtained by multiplying the lower  
7 of the indexed facility unit value of the nursing facility  
8 during the base year or the geographic ceiling, as deter-  
9 mined in accordance with subsection (b) of this section,  
10 by the relative weight of the resident class.

11 (5) The Secretary shall designate certain resident  
12 classes as requiring heavy care. An acuity payment of  
13 three (3) percent of the facility-specific nursing services  
14 price shall be added on to the facility-specific price for  
15 each resident class which the Secretary has designated as  
16 requiring heavy care. The acuity payment is intended to  
17 provide an incentive to nursing facilities to admit residents  
18 requiring heavy care.

19 (6) The per diem rate for the nursing service cost  
20 center for each resident in a resident class shall constitute  
21 the facility-specific price, plus the acuity payment where  
22 appropriate.

23 (7) The per diem rate for the nursing service cost  
24 center, including the facility-specific price and the acuity  
25 payment, shall be rebased annually.

1       (8) To determine the payment amount to a nursing  
2 facility for the nursing service cost center, the Secretary  
3 shall multiply the per diem rate (including the acuity pay-  
4 ment) for a resident class by the number of resident days  
5 for each resident class based on aggregated resident in-  
6 voices which each nursing facility shall submit on a month-  
7 ly basis.

8       (b)(1) The facility unit value identified in subsection  
9 (a)(3) of this section shall be subjected to geographic ceil-  
10 ings established for the geographic regions designated by  
11 the Secretary in section 105(c).

12       (2) The geographic ceiling shall be determined by  
13 first creating an array of indexed facility unit values in  
14 a geographic region from lowest to highest. Based on this  
15 array, the Secretary shall identify a fixed proportion be-  
16 tween the indexed facility unit value of the nursing facility  
17 which contained the medianth resident day in the array  
18 (except as provided in subsection (b)(4) of this section)  
19 and the indexed facility unit value of the nursing facility  
20 which contained the 95th percentile resident day in that  
21 array during the first year of operation of the Prospective  
22 Payment System for Nursing Facilities. The fixed propor-  
23 tion (e.g., 1.1 times the median or 110 percent of the me-  
24 dian) shall remain the same in subsequent years.

1       (3) To obtain the geographic ceiling on the indexed  
2 facility unit value for nursing facilities in a geographic re-  
3 gion in each subsequent year, the fixed proportion identi-  
4 fied pursuant to subsection (b)(2) of this section shall be  
5 multiplied by the indexed facility unit value of the nursing  
6 facility which contained the medianth resident day in the  
7 array of facility unit values for the geographic region dur-  
8 ing the base year.

9       (4) The Secretary shall exclude low volume and new  
10 nursing facilities, as defined in subsections (a) and (b) of  
11 section 113, respectively, for purposes of determining the  
12 geographic ceiling for the nursing service cost center.

13       (c) The Secretary shall establish by regulation, in ac-  
14 cordance with the Administrative Procedure Act, proce-  
15 dures for allowing exceptions to the geographic ceiling im-  
16 posed on the nursing service cost center. The procedure  
17 shall permit exceptions based on the following factors:

18           (1) Local supply and/or labor shortages which  
19 substantially increase costs to specific nursing facili-  
20 ties.

21           (2) Higher per resident day usage of contract  
22 nursing personnel, if utilization of contract nursing  
23 personnel is warranted by local circumstances, and  
24 the provider has taken all reasonable measures to  
25 minimize contract personnel expense.



1           (3) Extraordinarily low proportion of distinct  
2           part nursing facilities in a geographic region result-  
3           ing in a geographic ceiling which unfairly restricts  
4           the reimbursement of distinct part facilities.

5           (4) Regulatory changes that increase costs to  
6           only a subset of the nursing facility industry.

7           (5) The offering of a new institutional health  
8           service or treatment program by a nursing facility  
9           (in order to account for initial startup costs).

10          (6) Disproportionate usage of part-time employ-  
11          ees, where adequate numbers of full-time employees  
12          cannot reasonably be obtained.

13          (7) Other cost producing factors, to be specified  
14          by the Secretary in regulations promulgated pursu-  
15          ant to the Administrative Procedure Act, that are  
16          specific to a subset of facilities in a geographic re-  
17          gion (except case-mix variation).

18 **SEC. 209. THE PER DIEM RATE FOR ADMINISTRATIVE AND**  
19 **GENERAL COSTS.**

20          (a)(1) Payment relative to the administrative and  
21          general cost center shall be a facility-specific, prospective,  
22          per diem rate.

23          (2) The Secretary shall assign a per diem rate to a  
24          nursing facility by applying two standards which shall be  
25          calculated as follows:

1           (A) Standard A shall be derived for each geo-  
2           graphic region by first creating an array of indexed  
3           nursing facility administrative and general per diem  
4           costs from lowest to highest. The Secretary shall  
5           then identify a fixed proportion by dividing the in-  
6           dexed administrative and general per diem costs of  
7           the nursing facility which contained the medianth  
8           resident day of the array (except as provided in sub-  
9           section (a)(4) of this section) into the indexed ad-  
10          ministrative and general per diem costs of the nurs-  
11          ing facility which contained the 75th percentile resi-  
12          dent day in that array. Standard A for each base  
13          year shall constitute the product of this fixed pro-  
14          portion (e.g., 1.1 times the median or 110 percent  
15          of the median) and the administrative and general  
16          indexed per diem costs of the nursing facility which  
17          contained the medianth resident day in the array of  
18          such costs during the base year.

19          (B) Standard B shall be derived using the same  
20          calculation as in subsection (A) except that the fixed  
21          proportion shall use the indexed administrative and  
22          general costs of the nursing facility containing the  
23          85th percentile, rather than the 75th percentile,  
24          resident day in the array of such costs.

1       (3) The Secretary shall use the geographic regions  
2 identified in section 105(c) for purposes of determining  
3 Standard A and Standard B.

4       (4) The Secretary shall exclude low volume and new  
5 nursing facilities, as defined in subsections (a) and (b) of  
6 section 113, respectively, for purposes of determining  
7 Standard A and Standard B.

8       (5) To determine a nursing facility's per diem rate  
9 for the administrative and general cost center, Standard  
10 A and Standard B shall be applied to a nursing facility's  
11 administrative and general per diem costs, indexed for-  
12 ward using the DRI McGraw-Hill HCFA Nursing Home  
13 Without Capital Market Basket, as follows:

14           (A) The nursing facilities having indexed costs  
15 which fall below the median shall be assigned a rate  
16 equal to their individual indexed costs plus an "effi-  
17 ciency incentive" equal to one-half of the difference  
18 between the median and Standard A.

19           (B) The nursing facilities having indexed costs  
20 which fall below Standard A but at or above the me-  
21 dian shall be assigned a per diem rate equal to their  
22 individual indexed costs plus an "efficiency incen-  
23 tive" equal to one-half of the difference between the  
24 nursing facility's indexed costs and Standard A.

1 (C) The nursing facilities having indexed costs  
2 which fall between Standard A and Standard B shall  
3 be assigned a rate equal to Standard A plus one-half  
4 of the difference between the nursing facility's in-  
5 dexed costs and Standard A.

6 (D) The nursing facilities having indexed costs  
7 which exceed Standard B shall be assigned a rate as  
8 if their costs equaled Standard B. These nursing fa-  
9 cilities shall be assigned a per diem rate equal to  
10 Standard A plus one-half of the difference between  
11 Standard A and Standard B.

12 (E) For purposes of subsections (A)–(D) of sec-  
13 tion (a)(5) of this section, the median represents the  
14 indexed administrative and general per diem costs of  
15 the nursing facility which contained the medianth  
16 resident day in the array of such costs during the  
17 base year in the geographic region.

18 (b) Rebasing of the payment rates for administrative  
19 and general costs shall occur no less frequently than once  
20 a year.

21 **SEC. 110. PAYMENT FOR FEE-FOR-SERVICE ANCILLARY**  
22 **SERVICES.**

23 (a) Payment for each ancillary service enumerated in  
24 section 106(a)(3), such as physical therapy, shall be cal-  
25 culated and paid on a prospective fee-for-service basis.

1 (b) The Secretary shall identify the fee for each of  
2 the fee-for-service ancillary services for a particular nurs-  
3 ing facility by dividing the nursing facility's actual costs,  
4 including overhead allocated through the cost-finding  
5 process, of providing each particular service, indexed for-  
6 ward using the DRI McGraw-Hill HCFA Nursing Home  
7 Without Capital Market Basket, by the units of the par-  
8 ticular service provided by the nursing facility during the  
9 cost year.

10 (c) The fee for each of the fee-for-service ancillary  
11 services shall be calculated at least once a year for each  
12 facility and ancillary service.

13 **SEC. 111. REIMBURSEMENT OF SELECTED ANCILLARY**  
14 **SERVICES AND OTHER COSTS.**

15 (a) Reimbursement of selected ancillary services and  
16 other costs identified in section 106(a)(4), such as drugs  
17 and medical supplies, shall be reimbursed on a retrospec-  
18 tive basis as passthrough costs, including overhead allo-  
19 cated through the cost-finding process.

20 (b) The Secretary shall set charge-based interim rates  
21 for selected ancillary services and other costs for each  
22 nursing facility providing such services. Any overpayments  
23 or underpayments resulting from the difference between  
24 the interim and final settlement rates shall be either re-  
25 funded by the nursing facility or paid to the nursing facil-

1 ity following submission of a timely-filed medicare cost  
2 report.

3 **SEC. 112. THE PER DIEM RATE FOR PROPERTY COSTS.**

4 (a)(1) The basis for payment within the property cost  
5 center for nursing facilities shall be calculated and paid  
6 on a prospective (except as provided for newly constructed  
7 facilities in subsection (d)(2) of this section), facility-spe-  
8 cific, per resident day rate based on the fair asset value  
9 of the property.

10 (2)(A) The fair asset value of the property shall con-  
11 stitute the sum of the market value of the land (including  
12 site preparation costs), a reconstruction cost appraised  
13 value for the building(s) and fixed equipment, and the  
14 product of the number of beds in the nursing facility and  
15 a per bed allowance for major movable equipment.

16 (B) The land, building(s), and fixed equipment which  
17 are included in determining the fair asset value must be  
18 used in connection with the care of residents.

19 (C) Appraisals for the building(s) and fixed equip-  
20 ment shall be performed using the Marshall-Swift seg-  
21 mented cost method. A nursing facility shall be appraised  
22 every four years.

23 (D) The Secretary shall utilize an annual allowance  
24 of \$3,500 per bed for major movable equipment for a  
25 nursing facility. The Secretary shall review the annual al-

1 lowance for major movable equipment every five (5) years  
2 to determine its accuracy.

3 (E) If a nursing facility has commenced a renovation  
4 to a building and fixed equipment between appraisals the  
5 cost of which constitutes at least five (5) percent of the  
6 total value of the existing building and the fixed equip-  
7 ment, it may submit documentation as to the cost of the  
8 renovation during the previous year. The Secretary shall  
9 add the reasonable costs of the major renovation for the  
10 previous year to the fair asset value of the facility. This  
11 new asset value is to be the base for indexing until the  
12 next full appraisal.

13 (F) The value of the assets is determined through  
14 appraisals, indexing, and the application of allowances,  
15 and is, therefore, unaffected by sales transactions, refi-  
16 nancing, or other changes in financing. Accordingly, the  
17 concept of recapture of depreciation is inapplicable to fa-  
18 cilities whose payment is established under this chapter.

19 (3) The value of the land, building(s), and fixed  
20 equipment shall be indexed annually between reappraisals  
21 as follows:

22 (A) The land shall be indexed using the  
23 Consumer Price Index Urban.

24 (B) The building(s) and fixed equipment shall  
25 be indexed annually using the R. S. Means Index.

1       (4) The annual allowance for major movable equip-  
2 ment shall be indexed annually using the hospital equip-  
3 ment index of the Marshall Swift Valuation Service.

4       (5) The Secretary shall adjust the indexes used for  
5 the land, building(s) and fixed equipment, and major mov-  
6 able equipment for the different geographic regions.

7       (b)(1) The Secretary shall establish a per bed limit  
8 on the fair asset value of a nursing facility for each geo-  
9 graphic region, as designated in section 105(c). The per  
10 bed limit shall be equal to the average indexed costs in-  
11 curred by all recently constructed nursing facilities in the  
12 geographic region which have been designed and con-  
13 structed in an efficient manner.

14       (2) The per bed limit on the fair asset value shall  
15 be indexed annually using the R. S. Means Index.

16       (3) The per bed limit shall be recalculated every five  
17 (5) years.

18       (c) The total annual rental shall constitute the prod-  
19 uct of the lower of the indexed fair asset value or the in-  
20 dexed per bed limit and a rental rate which shall be based  
21 on the average yield for twenty (20) year United States  
22 Treasury Bonds during the prior year plus a risk premium  
23 of 3 percentage points.

24       (d)(1) The per resident day rental shall be obtained  
25 by dividing the total annual rental by 90 percent of the



1 annual licensed bed days. The per resident day rental shall  
2 constitute the per diem rate attributable to the property  
3 cost center.

4 (2) The per resident day rental rate for newly-con-  
5 structed facilities during their first year of operation shall  
6 be based on the total annual rental divided by the greater  
7 of fifty (50) percent of available resident days or actual  
8 annualized resident days up to 90 percent of annual li-  
9 censed bed days during their first year of operation.

10 (e) Facilities in operation prior to the effective date  
11 of this Act shall receive the per resident day rental or ac-  
12 tual costs, as determined in accordance with HCFA-Pub.  
13 15, whichever is greater, except that a nursing facility  
14 shall be reimbursed the per resident day rental.

15 (1) Commencing with the date upon which the  
16 nursing facility changes ownership; or

17 (2) After the nursing facility has accepted the  
18 per resident day rental; or

19 (3) After renegotiation of the lease for the land  
20 and/or building(s), not including the exercise of op-  
21 tional extensions specifically included in the original  
22 lease agreement or valid extensions thereof.

23 **SEC. 112. MID-YEAR RATE ADJUSTMENTS.**

24 (a)(1) The Secretary shall establish by regulation, in  
25 accordance with the Administrative Procedure Act, a pro-

1 cedure for granting midyear rate adjustments for the  
2 nursing service, administrative and general, and fee-for-  
3 service ancillary services cost centers.

4 (2) The mid-year rate adjustment procedure shall re-  
5 quire the Secretary to grant adjustments on an industry-  
6 wide basis, without the need for nursing facilities to apply  
7 for such adjustments, based on the following cir-  
8 cumstances:

9 (A) Statutory or regulatory changes affecting  
10 nursing facilities (e.g., new staffing standards or ex-  
11 panded services).

12 (B) Changes to the Federal minimum wage.

13 (C) General labor shortages with high regional  
14 wage impacts.

15 (3) The midyear rate adjustment procedure shall per-  
16 mit specific facilities or groups of facilities to apply for  
17 an adjustment based on the following factors:

18 (A) Local labor shortages.

19 (B) Regulatory changes that apply to only a  
20 subset of the nursing facility industry.

21 (C) Economic conditions created by natural dis-  
22 asters or other events outside of the control of the  
23 provider.

24 (D) Other cost producing factors, except case-  
25 mix variation, to be specified by the Secretary in

1 regulations promulgated pursuant to the Adminis-  
2 trative Procedure Act.

3 (4)(A) A nursing facility which applies for a midyear  
4 rate adjustment pursuant to subsection (a)(3) of this sec-  
5 tion shall be required to show that the adjustment will  
6 result in a greater than 2 percent deviation in the per diem  
7 rate for any individual cost service center or a deviation  
8 of greater than \$5,000 in the total projected and indexed  
9 costs for the rate year, whichever is less.

10 (B) A nursing facility application for a midyear rate  
11 adjustment must be accompanied by recent cost experi-  
12 ence data and/or budget projections.

13 **SEC. 113. EXCEPTION TO PAYMENT METHODS FOR NEW**  
14 **AND LOW VOLUME NURSING FACILITIES.**

15 (a) A low volume nursing facility shall constitute a  
16 nursing facility having fewer than 2,500 medicare part A  
17 resident days per year.

18 (b) A new nursing facility shall constitute a newly  
19 constructed, licensed, and certified nursing facility and/or  
20 a nursing facility that is in its first three years of oper-  
21 ation as a medicare part A provider. A nursing facility  
22 that has operated for more than three years but has a  
23 change of ownership shall not constitute a new facility.

24 (c) Low volume nursing facilities shall have the op-  
25 tion of submitting a cost report to receive retrospective

1 payment for all of the cost centers, other than the property  
2 cost center, or accepting a per diem rate which shall be  
3 based on the sum of—

4 (1) the median indexed resident day facility  
5 unit value for the appropriate geographic region for  
6 the nursing service cost center during the base year  
7 as identified in section 108(b)(2);

8 (2) the median indexed resident day administra-  
9 tive and general per diem costs of all nursing facili-  
10 ties in the appropriate geographic region as identi-  
11 fied in section 109(a)(5)(E);

12 (3) the median indexed resident day costs per  
13 unit of service for fee-for-service ancillary services  
14 which shall be obtained using the cost information  
15 from the nursing facilities in the appropriate geo-  
16 graphic region during the base year, excluding low  
17 volume and new nursing facilities, and which shall  
18 be based on an array of such costs from lowest to  
19 highest; and

20 (4) The median indexed resident day per diem  
21 costs for selected ancillary services and other costs  
22 which shall be obtained using information from the  
23 nursing facilities in the appropriate geographic re-  
24 gion during the base year, excluding low volume and

1 new nursing facilities, and which shall be based on  
 2 an array of such costs from lowest to highest.

3 (d) New nursing facilities shall have the option of  
 4 being paid on a retrospective cost passthrough basis for  
 5 all cost centers, or in accordance with section 113(c)(1)  
 6 through (4)—Low Volume Providers.

7 **SEC. 114. APPEAL PROCEDURES.**

8 (a)(1) Any person or legal entity aggrieved by a deci-  
 9 sion of the Secretary under this Act, and which results  
 10 in an amount in controversy of \$10,000 or more, shall  
 11 have the right to appeal such decision directly to the Pro-  
 12 vider Reimbursement Review Board (hereinafter “the  
 13 Board”) authorized under section 1878 of title XVIII of  
 14 the Social Security Act.

15 (2) The \$10,000 amount in controversy shall be com-  
 16 puted in accordance with 42 C.F.R. § 405.1839.

17 (b) Hearings before the Board under this Act, and  
 18 any appeals thereto, shall follow the procedures under sec-  
 19 tion 1878 of title XVIII of the Social Security Act and  
 20 the regulations contained in 42 C.F.R. §§ 405.1841–1889,  
 21 except to the extent that they conflict with, or are inap-  
 22 plicable on account of, any other provision of this Act.

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